



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,387	04/06/2004	Peter V. Radatti	45-03	7299
7590	05/13/2005		EXAMINER	
Mr. Peter V. Radatti CYBERSOFT, INC. 1508 Butler Pike Conshohocken, PA 19428			PYZOWA, MICHAEL J	
			ART UNIT	PAPER NUMBER
			2137	

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/655,387	RADATTI, PETER V.
	Examiner Michael Pyzocha	Art Unit 2137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 May 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1. Claims 1-36 are pending.
2. Amendment filed 05/02/2005 has been received and considered.

Specification

3. The objection to the specification has been withdrawn based on the filed amendment.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 6-11, 18-19, 21-25, 34, 36 are rejected under 35 U.S.C. 102(e) as being anticipated by Tso et al (US 6088803).

As per claims 1, 3, 9, 11, 18, 34, and 36, Tso et al discloses an apparatus and method including a protocol parser; a protocol scanner; and, a proscribed code scanner comprised of a

Art Unit: 2137

scanning means and an indicator whereby said protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code to said proscribed code scanner through said protocol scanner (see column 6 lines 10-24 where the parser of Tso et al performs the functions of both the protocol parser and protocol scanner).

As per claims 2 and 19, Tso et al discloses a translation means whereby said translation means translates said code to authorized program parameters (see column 6 lines 10-24).

As per claim 4, 6, 23, Tso et al discloses the proscribed code scanner further comprises a scanning means and an indicator means and provide an indication of the presence is scanning finds proscribed code (see column 3 lines 39-54).

As per claims 7 and 25, Tso et al discloses the proscribed code scanner comprises a malicious code scanner (see column 3 lines 39-54).

As per claims 8, 10, and 24, Tso et al discloses the protocol parser further comprises a configuration means for configuring interception parameters (see column 6 lines 10-24).

As per claims 21-22, Tso et al discloses returning said code to a communication channel if said indicator is negative (see column 3 lines 55-65).

Art Unit: 2137

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 5, 12, 15-17, 20, 26-29, 32-33, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tso et al as applied to claims 1 and 18 above, and further in view of Johnson (US 5682428).

As per claims 12, 17, 26, and 35, Tso et al fails to disclose decrypting the code.

However, Johnson discloses decrypting data (see column 27 lines 23-56).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Johnson's method of decryption in Tso et al's system of code scanning.

Motivation to do so would have been to be able to reference and manipulate previously encrypted data (see Johnson column 27 lines 23-56).

Art Unit: 2137

As per claims 5 and 20, the modified Tso et al and Johnson system discloses a certification means (see Johnson column 24 line 52 through column 25 line 8).

As per claims 15-16, 27-29, and 32, the modified Tso et al and Johnson system discloses encrypting the code if the indication of a prescribed code is negative (see Johnson column 27 lines 23-56).

As per claim 33, the modified Tso et al and Johnson system discloses a separate system inserted in said communications channel, and with at least one of said steps of intercepting said code; decrypting said code; scanning said code for the presence of proscribed code, and providing an indicator for the presence of said proscribed code, occurring on said separate machine (see Tso et al and Johnson as applied to previous claims).

8. Claims 13-14 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Tso et al and Johnson system as applied to claims 12 and 26 above, and further in view of Elgamal et al (US 6389534).

As per claims 13-14 and 30-31, the modified Tso et al and Johnson system fails to disclose the use of SSL or S/MIME encryption.

Art Unit: 2137

However, Elgamal et al discloses the use of these encryption techniques (see column 4 lines 15-29).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Elgamal et al's methods of encryption to perform the encryption of the modified Tso et al and Johnson system.

Motivation to do so would have been to allow for the encryption suitable for each market (see Elgamal et al column 4 lines 15-29).

Response to Arguments

9. Applicant's arguments filed 05/02/2005 have been fully considered but they are not persuasive. Applicant argues that Tso does not disclose a protocol parser; the protocol scanner could not be the virus scanner of Tso because Tso does not have the protocol parser, and Tso fails to disclose peer-to-peer or instant messaging code.

Regarding Applicant's argument that Tso fails to disclose a protocol parser, Examiner uses the broadest reasonable interpretation of "protocol parser" is the rejection. Applicant can be its own lexicographer; however, using examples does not clearly define a word. The use of "In this embodiment" "NTI 40 can" "an embodiment" and "NTI 40 may" merely give examples of

Art Unit: 2137

what a protocol parser may be and do not clearly define a protocol parser. Applicant relies on the cited portion of the parent application (now patent) to argue that Tso does not disclose a protocol parser. However, these limitations are not in the claims.

Regarding Applicant's argument that Tso's virus scanner could not be the claimed code scanner, the cited portions of column 6 in Tso show the parser passing code to the scanner and therefore teach the claimed limitation.

Regarding Applicant's argument that Tso fails to disclose peer-to-peer or instant messaging code, Applicant is directed to column 6 lines 12-16 where Tso teaches peer-to-peer communications.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

Art Unit: 2137

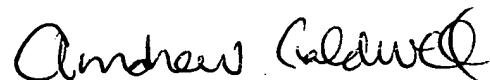
expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2137

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MJP

**ANDREW CALDWELL
SUPERVISORY PATENT EXAMINER**